

If the Court is inclined to grant the Plaintiffs until September 22, 2009 to file their summary judgment replies and sur-replies, Defendants respectfully submit that the Court's order also should take into account several other related matters. In particular, the Court has recently indicated that it (rather than Magistrate Judge Bowler) will hear the spoliation motions filed by Defendants. In addition, the Court must address certain motions that are inextricably linked to the question of summary judgment – including *Daubert* motions directed to Plaintiffs' principal damages expert and original source motions filed by Defendants that challenge this Court's subject matter jurisdiction. (*See* Dkt. Nos. 6175, 6209-10, 6196-97, 6179-83). Briefing on the spoliation motions is complete, but (at Plaintiffs' request) briefing on the *Daubert* and original source motions will not be completed until mid-November. Given that Plaintiffs' requested extension will cut into the already limited time that the Court has between the close of summary judgment briefing and the October 20 hearing, Defendants submit that the better course is to fashion a new schedule that more reasonably addresses the many issues currently pending in these cases. Specifically, the Court should:

- Extend the Plaintiffs' deadlines to file their summary judgment replies and sur-replies by one week to September 22, 2009;
- Extend the time for Defendants to file their sur-replies in opposition to Plaintiffs' Cross Motions for Summary Judgment similarly by one week, making them due October 12, 2009;
- Schedule at least two hours of argument relating to the *Daubert* and original source motions, which bear directly on summary judgment issues, on a date after briefing on those motions will be completed;
- Re-schedule the hearing as to the pending motions for summary judgment to a date shortly after the *Daubert* and original source motions are argued; and
- Use the hearing currently scheduled for Oct. 20, 2009 to address Defendants' spoliation motions (Dkt. Nos. 6096-97; 6109-10; 6254-55).

Dated: September 8, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2009, a true and correct copy of the foregoing **DEFENDANTS' CROSS MOTION TO ADJUST BRIEFING AND ARGUMENT SCHEDULE AND RESPONSE TO PLAINTIFFS' MOTION TO ENLARGE TIME FOR PLAINTIFFS' SUMMARY JUDGMENT REPLIES AND SUR-REPLIES** was served upon all counsel of record electronically by causing this motion to be posted via Lexis-Nexis.

/s/ Brian J. Murray